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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/708,509

03/09/2004

Douglas R. Sparks

A4-1713

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HARTMAN & HARTMAN, P.C.
552 EAST 700 NORTH
VALPARAISO, IN 46383

EXAMINER

GRAY, PHILLIP A

ART UNIT

PAPER NUMBER

3767

NOTIFICATION DATE

DELIVERY MODE

08/31/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

domenica@hartmaniplaw.com
gayle@hartmaniplaw.com

Office Action Summary	Application No. 10/708,509	Applicant(s) SPARKS ET AL.	
	Examiner Phillip Gray	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's communication of 6/4/2010.

Claims 21 and 23 are pending.

Specification

The disclosure is objected to because of the following in formalities: It is the examiner's position that applicant has invoked sixth paragraph, means plus function language to define Applicant's invention. Therefore the examiner requires the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to **explicitly state**, with reference to the terms and phrases of the claim element, what structure, materials, and acts perform the function recited in the claim element. Please note that the MPEP clearly states, "Even if the disclosure implicitly sets forth the structure, materials, or acts corresponding to the means-(or step) plus-function claim element in compliance with 35 U.S.C. 112, first and second paragraphs, the PTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o)...". (also see MPRP 21841 (Rev. 1, Feb 2000))

Appropriate correction is required.

The use of the trademark in paragraphs [0029]-[0030] of the specification has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

Claims 21 and 23 are objected to because of the following informalities: It is the Examiner's position that Applicant has attempted to invoke sixth paragraph means plus function language to define applicant's invention. Therefore the Examiner has objected to the claims for the reasons set forth above in the objection to the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

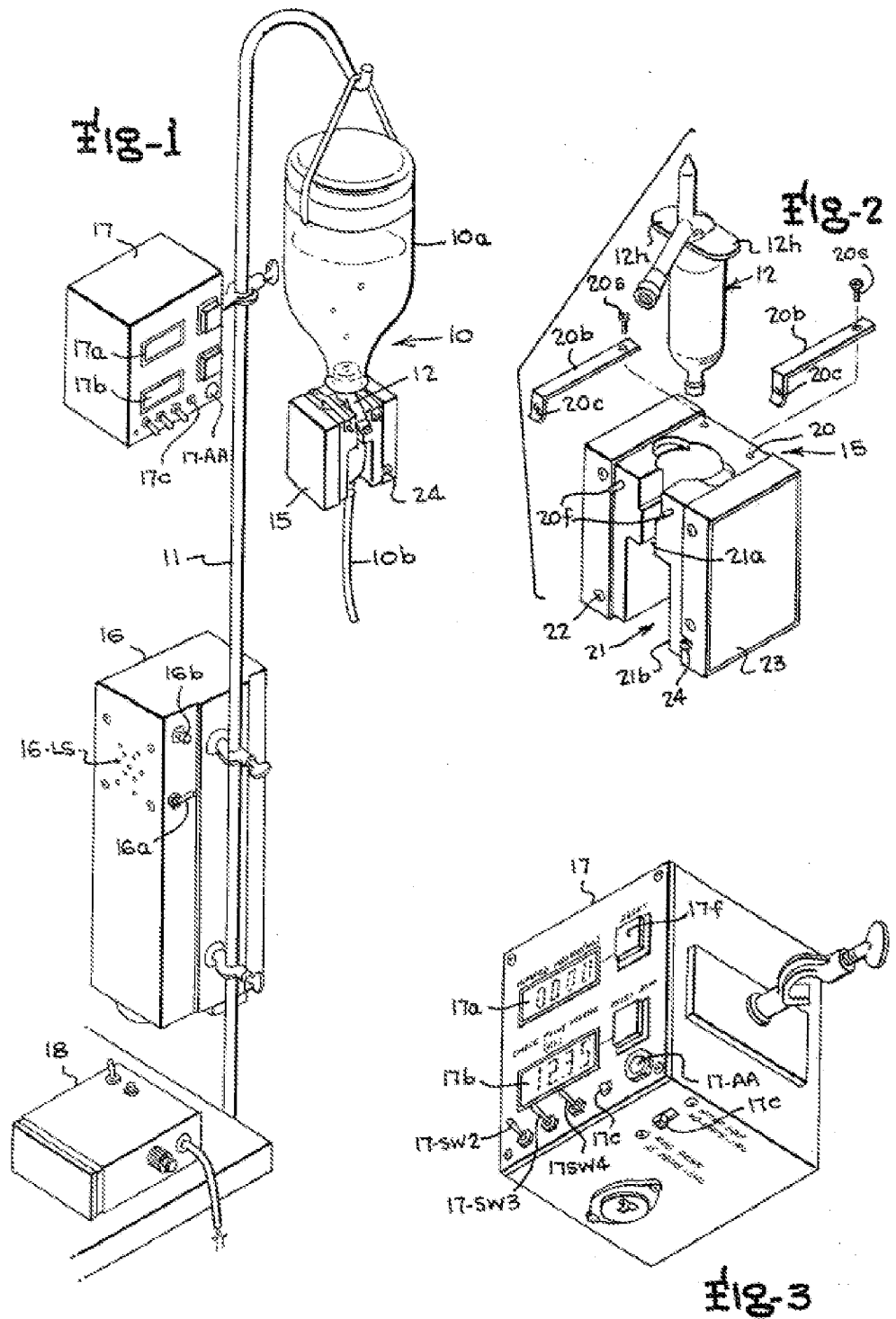
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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 21 and 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter Jr. et al. in view of Tadigadapa et al. (U.S. Patent 6,477,901).

Walter discloses a flow rate monitor and totalizer with count display system (as in figures 1-3) with a intravenous pole (11), intravenous tube (106), inline sensing unit (device of figure 2) with a housing (12), inlet (near 12), outlet (near 24 end), cavity (area which 12 occupies), and a sensing element (23) having a first response to the density of the fluid flow (drop count monitor) and a second response to the mass flow rate of the fluid flow (totalizer) further see paragraphs at columns 6-8 discussing drop rate and total volumization, a module (17/16) attached to the pole with a means for display 17a/17b, and means for audible output (16-LS), and a means for communication between the sensing unit and the module (18). Concerning claim 23 it is examiners position that module 17 doesn't contact fluid and further sensing unit in figure 2 is separable and disposable and the module is reusable, in the infusion system.

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Walter discloses the claimed invention except for the freestanding tube type Coriolis effect sensing element. Tadigadapa teaches that it is known to use freestanding tube type Coriolis effect sensing element as set forth in abstract and paragraphs at columns 3-6 to provide an accurate means for fluid flow monitoring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Walter with a freestanding tube type Coriolis effect sensing element as taught by Tadigadapa, since such a modification would provide the system with a freestanding tube type Coriolis effect sensing element for providing an accurate means for fluid sensing, and flow monitoring.

Response to Arguments

Applicant's arguments filed 6/4/2010 have been fully considered but they are not persuasive. Applicant's argue that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Walter's sensing density or mass flow rate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

.It is examiners position that Tadigadapa teaches a Coriolis sensing element capable of measuring "mass flow rate" and or "density", And Walter discloses a device for using flow rate data to control delivery of the fluid. One way Walter measures flow rate is by an optical sensor and "drop count" with "totalizer". It is examiners position that this counting of drops past the sensor is a type of "mass flow rate" rather than a

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"volumetric flow rate" and of the same type of flow rate measurements as the teaching sensor of Tadigadapa (which is clearly a mass flow rate sensor). Mass flow rate and volumetric flow rates are two specific ways of measuring "flow rate" in general. It is examiners position that Walter system senses flow rate, (optically in one embodiment), it is examiner's position that Tadigadapa is a flow rate sensor that measures mass flow rate or density. Therefore the combination and teachings of Walter in view of Tadigadapa would disclose the infusion system, which produces an output base on at least one of the first and second responses of the sensing unit (flow rate - mass flow rate or density.)

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phillip Gray/
Examiner, Art Unit 3767

/KEVIN C. SIRMONS/
Supervisory Patent Examiner, Art Unit 3767

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